

# Procurement Integrity Brochure

## What is Procurement Integrity?

The Department of Energy, like most federal agencies, purchases many products and services from the private sector. To preserve the integrity of the Federal procurement process and assure fair treatment of bidders, offerors, and contractors, laws govern the procurement process and the manner in which federal and contractor personnel conduct business with each other. One of these statutes is Section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423), often referred to as the Procurement Integrity Act. This Act prohibits certain activities by personnel involved in the procurement process. The Federal Acquisition Regulation (FAR), at Section 3.104, sets forth the regulations that implement the provisions of the Procurement Integrity Act.

## The Procurement Integrity Act addresses various activities by:

- Current Federal employees
- Certain former Federal Employees.
- Bidders and Offerors.
- Other personnel involved in agency procurements and contracts.

This brochure is intended to act as a primer for all DOE employees on issues related to procurement integrity. As such, not all statutory or regulatory details are included here. Employees should consult their procurement counsel to discuss detailed information and procedures in those areas that may affect them personally in procurements:

- Inappropriate disclosure of information at any point in the acquisition process, beginning when agency needs are established.
- Avoiding making Government decisions without authority.

All DOE employees should also be familiar with other statutes and regulations that set forth the standards of conduct for all Federal employees, including those involved in procurements. The Office of the Assistant General Counsel for General Law at Headquarters or the local ethics official in the field can provide further information addressing standards of conduct, including information on:

- Avoiding personal conflicts of interest.
- Taking bribes or accepting certain gratuities.
- Using an official Government position to advance personal interests.

- Maintaining inappropriate financial interests.
- Discussing non-federal employment with bidders or offerors
- Accepting compensation from certain contractors after leaving the Government

## **Key Provisions**

### **I. Disclosing Procurement Information**

For competitive procurements, the personnel identified below shall not, other than permitted by law, knowingly disclose proposal or bid information or source selection information, before the award of a contract to which the information relates.

- A current or former official of the United States.
- A person who is acting for, or has acted for or on behalf of, the United States with respect to a Federal agency procurement.
- A person who is advising, or has advised, the United States with respect to a Federal agency procurement.

Proposal or bid information submitted in connection with a solicitation may not be disclosed if it hasn't already been disclosed to the public, including:

- Cost or pricing data, including indirect costs and direct labor rates.
- Proprietary information about manufacturing processes, operations, or techniques identified as such by any contractor.
- Information identified by any contractor as “contractor bid or proposed information.”

Source selection information, which is information that is prepared for use by a Federal agency for the purpose of evaluating a bid or proposal, may not be disclosed, including:

- Bid prices.
- Proposed costs or prices.
- Source selection plans.
- Technical evaluation plans.
- Technical and cost or price evaluation of proposals.
- Competitive range determinations.
- Rankings of bids, proposals, or competitors.
- Reports and evaluations of source selection panels, boards, or advisory councils.
- Other “source selection information.”

### **II. Obtaining Procurement Information**

For competitive procurements, a person shall not, other than as permitted by law, knowingly obtain proposal or bid information or source selection information, before the award of a contract to which the information relates. This prohibition applies to the same type of information identified above.

### **III. Discussing Employment with Contractors**

If you are a DOE employee who is participating personally and substantially in a competitive procurement valued in excess of the simplified acquisition threshold of \$150,000, and you contact or are contacted by a bidder or offeror in that procurement regarding possible non-Federal employment, you are required to:

- Promptly report the contact in writing to your supervisor and your agency ethics official, and
- Either reject the possibility of non-Federal employment or disqualify yourself in writing from further involvement in that procurement, until authorized to resume participation.

### **IV. Accepting Compensation from a Contractor**

A former DOE employee may not accept compensation from a contractor as an employee, officer, director, or consultant of the contractor for a period of one year after the date that the former DOE employee:

- Served, at the time of selection of the contractor or the award of the contract, as the procuring contracting officer, the source selection authority, a member of a source selection evaluation board, or the chief of a financial or technical evaluation team. This applies to contracts over \$10,000,000.
- Served as the program manager, deputy program manager, or administrative contracting officer for a contract in excess of \$10,000,000.
- Personally made any of the following decisions on behalf of the Federal agency:

To award a contract, subcontract, modification of a contract or subcontract, or a task order or delivery order over \$10,000,000.

To establish overhead or other rates for a contractor on a contract or contracts valued in excess of \$10,000,000.

To approve a contract payment or payments over \$10,000,000.

To pay or settle a claim in excess of \$10,000,000.

This post-employment prohibition does not apply to divisions or affiliates of a contractor that do not produce the same or similar products or services as the entity of the contractor referred to above.

## **Illustrations**

- Two DOE employees who have been friends for many years are talking about their work assignments over lunch. One of the employees is a Contracting Officer's Representative (COR) who is participating in the selection process on a competitive procurement. When asked how the evaluations are proceeding, the COR knows not to discuss the subject since disclosure of source selection information is prohibited.
- A DOE Engineer responsible for drafting a statement of work on a competitive solicitation receives a telephone call from a contractor's business manager who asks when the solicitation will be released. During the conversation, the business manager mentions that a position will be opening in his firm for a Project Engineer and that the DOE employee would be highly qualified for the job. The DOE employee realizes that a Procurement Integrity issue has been raised, rejects the overture, and immediately notifies her supervisor and agency ethics official in writing of the contact with the contractor.
- An environmental engineer served on a source selection board that evaluated competitive proposals for a recently awarded contract totaling \$11M. The engineer is considering retiring from the Government to do consulting work for environmental contractors. Under the Procurement Integrity Act, he is barred from accepting any compensation from the contractor who was awarded that particular contract for a period of 1 year after his work ended on the evaluation board.

## **What are the Penalties for Violations?**

The following criminal penalty applies to knowingly (1) disclosing or (2) obtaining proposal or bid information or source selection information:

- Imprisonment of not more than 5 years and/or a fine.

The following civil penalties apply to knowingly (1) disclosing or (2) obtaining proposal or bid information or source selection information, (3) discussing non-Federal employment with contractors, or (4) accepting compensation from contractors:

- Each knowing violation of any of the four key provisions of the Procurement Integrity Act may result in civil penalties up to \$50,000 per violation and administration actions.
- Up to \$50,000 per violation plus twice the amount of compensation an individual received or offered for the prohibited conduct.
- Up to \$500,000 per violation plus twice the amount of compensation an organization received or offered for the prohibited conduct.

The following administrative actions apply to knowingly (1) disclosing or (2) obtaining proposal or bid information or source selection information, (3) discussing non-Federal employment with contractors, or (4) accepting compensation from contractors

- Cancellation of the procurement.
- Disqualification of an offeror.
- Rescission of the contract.
- Suspension or debarment of the contractor.
- Initiation of an adverse personnel action.
- Any other action in the best interest of the Government.

### **Going Beyond the Procurement Integrity Act**

FAR Part 14 states that, before the procurement solicitation, information concerning proposed acquisitions shall be restricted to those having a legitimate interest within the Government. Releases of information shall be made (1) to all prospective bidders, and (2) as nearly as possible at the same time, so that one prospective bidder shall not be given unfair advantage over another. FAR Part 15 states that, before proposals are received, any exchange of information among all interested parties must be consistent with procurement integrity requirements.

It's never too early in the acquisition process to avoid prejudicial release of information and potential conflicts of interest. Acquisition begins at the point when agency needs are established. All Government employees should understand the adverse impact of inappropriate disclosure of sensitive information regarding future procurements. Early in the acquisition planning process and throughout the development of the Government's requirements, Contracting Officers will advise the program offices and other acquisition personnel of the negative consequences and prejudicial impact of improperly releasing information to potential future offerors. Program offices should make an effort to coordinate with the Contracting Officer early in the acquisition planning stage in order to avoid any procurement integrity violations.

### **Who Can You Contact for More Information on Procurement Integrity?**

- The Office of Personnel provides new employees written information on ethical conduct when they first come on board.
- Procurement offices provide guidance for any acquisitions in which DOE personnel are involved.
- The Assistant General Counsel for Procurement and Financial Assistance, GC-61, (or local procurement Counsel at field offices) provides advice on questions addressing disclosure of contractor bid or proposal information or source selection information.
- The Assistant General Counsel for General Law, GC-77, (or local ethics Counsel at field offices) provides ethics advice on the Standards of Conduct for Employees of the Executive Branch, as well as conduct covered by the Procurement Integrity Act.

## **Where Can You Read More About Procurement Integrity?**

- Title 41 of the United States Code, Chapter 423.
- The Federal Acquisition regulation (FAR), Section 3.104.
- The Department of Energy Acquisition Regulation (DEAR), Section 903.104.
- The Department of Energy Acquisition Guide, Chapter 3, Part (1)

Contact: Office of Procurement and Assistance Policy, 202-287-1330.